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Author:

Shianjany Pradhan

Symbiosis Law School, Noida

2nd Year, BA LL.B.**INTERIM MEASURES UNDER THE ARBITRATION AND
CONCILIATION ACT**

At all events, arbitration is more rational, just, and humane than the resort to the sword -Richard Cobden

LAW JOURNAL

Arbitration, conciliation or mediation are very effective legal methods which are opted for as they are problem specific and time efficient. These are governed by the arbitration and conciliation act of 1996 which is based on the arbitration act of 1940, which now stands repealed. Arbitration tribunals, can be seen as one out of the court settlement, where an unbiased adjudicator sits and tries to solve the issues that have arisen between the parties. The arbitrator, takes the responsibility to resolve the dispute between the parties as per the arbitration agreement. At times, any of the parties may feel a sudden need as there would have been an issue that needs to be resolved then and there, else, the party may face some loss. As a result, interim relief measures are provided under the arbitration and conciliation act of 1996. In this research article these relief measures as provided in section 9 and section 17 have been analyzed.

Introduction

One of the most effective ways of alternative dispute resolution is arbitration and conciliation, which are governed in India as per the Arbitration and Conciliation Act, 1996 which also derives authority from the UNCITRAL model of the international commercial arbitration, dealing with arbitration and conciliation. The act deals with international arbitration rules along with domestic arbitration rules and foreign arbitral awards. These days, such ways of alternative dispute resolution are widely sought after and these cases are dealt in the arbitration tribunals. While the cases go on, there can be chances that one party may try to subjugate the rights of the other by prolonging the time for no reason, in such cases the other party becomes the aggrieved. There can be chances that even the arbitral award would not suffice the loss that the party may have suffered while dealing with prolongment of the case, in such case the party can seek for an interim measure. Interim measures are those steps taken by the court, where there is an imminent need or risk, but the petitioner is supposed to seek the same and it can't be granted by Suo-moto by the courts and the tribunals.

The interim measures in the arbitration and conciliation act are discussed under two sections, section 9 and section 17, which deal with interim measures of the courts and the interim measures from the arbitration tribunals respectively. With such provisions in place such interim measures of the arbitration tribunal and the courts are put at par. An amendment to the section 17 was made in 2015, which actually set some boundaries on the interim measures of the arbitration tribunals as earlier its scope was not clearly defined. It can be said that it did curtail the powers of the section and the arbitration tribunals but it is not so, as earlier due to the undefined nature of the section, the tribunals did not invoke the same. So, it can be said that the amendment clearly laid down the interim relief measures that can be provided by the tribunals. On the other hand, the interim measures of the courts have been clearly made available under section 9.

Interim measures under Section 9

The courts have the right to grant interim relief when it is asked for and this right is dealt with in the section 9 of the act. The relief could be granted any time before the arbitration proceedings, during the proceedings or even after the arbitral award has been granted by the arbitration tribunals

but the award should not have been enforced yet but in general practice the courts are reluctant to grant such a relief after the arbitration proceedings and will be doing so, if it is proved by the petitioner that the same will not be equally efficacious for the petitioner and is of such nature that will provide a greater remedy. It is actually said that if this section gets invoked, half of the battle of the court gets won. The main purpose of the act is to provide protection which of an interim measure, so the courts can't provide any other permanent protection in such cases. Also, once such a relief has been granted before the commencement of the arbitration proceedings then within ninety days the arbitration tribunal has to be set up from the date when such a relief was sought. The subsections of the section lay down certain criteria for which the petitioner can seek the interim measure from the court which are: -

- Section 9(1) says that, an interim relief from the courts can be sought if a guardian has to be appointed for the minor or for the person of an unsound mind.
- Section 9(2) talks about the situation where the relief can be sought for protection which is required in any of the matters as mentioned in the further clauses of the subsection, which are
 - i. Any goods which form the subject matter of the arbitration proceedings, can be preserved, sold or an interim custody can be sought, as the petitioner feels necessary.
 - ii. If the petitioner wants to secure any amount of the arbitration proceeding then they may.
 - iii. If any detention or protection of the property has to be done, or any samples has to be collected from the same or any experiments or expedition has to be carried out.
 - iv. Allowing interim injunction or the appointment of a receiver
 - v. Any other relief which the court may feel is required to be granted.

It has to be noted that, in case a relief has to be sought after the arbitration proceedings then the same can be done by the person in whose favor the arbitral award has been granted, and not by the

person who lost the case. As stated earlier, in general practice the same is avoided by the courts, if the arbitral award is granted, until the court feels that the relief measure by them will really be useful, they avoid to grant the same. Initially, the maintainability of the suits under this section were challenged if there was not any sort of arbitration proceedings pending. This was held by the madras high court in *NEPC Ltd. v. Sundaram Finance Limited*¹ and the same order was reversed by the supreme court of India in *Sundaram Finance Limited v. NEPC Ltd*², and the court had said here that a relief can be definitely be sought in cases where there is no pending arbitral proceeding but there must be a proof that the parties had the intention to initiate the arbitration proceedings, the court had stressed upon the literal usage of the section which says that the relief can be sought “before or during the proceeding”³. Any appeal for these relief measures can be sought under section 37(1) of the act, like any other orders of the courts are appealed.

Interim Measures under Section 17

Before the amendment of 2015, section 17 was quite open textured, which means it could not be precisely known what the section was trying to say regarding the powers of the arbitration tribunals. After 2015, it became clearly defined. Just like interim relief can be sought from the courts, in the same manner, it can be sought from the arbitration tribunals, the proviso to the same being that, if the arbitration agreement has clearly stated that no such relief can be taken, then the same has to be followed which means in cases where it has been stated in the arbitration agreement itself that it can't be done, then the same has to be followed. If no such thing has been mentioned then there is no issue. The basis to obtain the relief remains the same it was in section 9. The tricky part to the section is that although the courts can grant the relief, they do not have the power to enforce the same. Also, if a relief is granted then the same has to be within the limits of the arbitration agreement itself, something extraordinary or outside the agreement, can't be granted. Generally, the rule is that such interim orders have to be enforced and the courts are granted the power of enforceability, which is equivalent to a decree, but here it is not so, the tribunals are not granted with the same power. It can be said that this way the power of the arbitration tribunals has

¹ NEPC Ltd. vs. Sundaram Finance Limited AIR 1999 Mad 29

² Sundaram Finance Limited vs NEPC Ltd (1999) 2 MLJ 53 (SC)

³ Avtar Singh, Law of Arbitration and Conciliation, Pg. 116

been curbed, and somehow the interim relief has to be in tandem with the final arbitral award. As per the amendment of 2019, to the act, a party can apply for a relief from the arbitral tribunal, only during or before the proceedings and not after that.

Even though, the enforcement powers have not been granted, it was held by the supreme court in the case of *Alka Chandewar v. Shamshul Ishrar Khan*⁴, that any party who does not comply or follow the orders of the arbitration tribunal, will be charged under contempt of court act of 1971. Earlier, in case the party didn't follow the order of the arbitration tribunal the matter had to be taken to the higher courts by the arbitral tribunal which made the whole thing burdensome. Finally, later with the amendment in 2015, the section 17(2) it was made clear that such a non-compliance with the orders of the arbitration tribunal would be seen as the orders of the court and have to be enforced as per the civil procedure code, 1908.

What is the difference between section 9 and section 17?

Even if these two sections are way apart regarding which body can provide up the relief measures, the confusion regarding the powers are still bound to occur. This was quite understood by the supreme court of India, so in the judgement of *Firm Ashok Traders v. Gurumukh Das Saluja*⁵, the court put up clearly the differentiation between the two. First of all, section 9 is regarding the interim measures that are the jurisdiction of the courts and on the other hand, section 17 is concerned with the interim measures that are taken up by the arbitration tribunals. Secondly, as instructed by the supreme court of India in the abovementioned case, section 17 is applicable only when the arbitration tribunals are in existence. Although, the powers that are granted under section 9 and section 17 are bound to overlap, as far section 9 is concerned then it is mostly regarding the interim relief that is sought before or after the arbitration proceedings.

⁴ *Alka Chandewar v. Shamshul Ishrar Khan* 2017 SC 318

⁵ *Firm Ashok Traders v. Gurumukh Das Saluja* (2004) 3 SCC 155

Conclusion

We can say that, the amendment of 2015 brought a change which was actually very effective for the working of these arbitration courts. Earlier, one could seek just the remedy of the courts and the power of the tribunal for interim relief was not defined as result, the interim relief granting power of the arbitration tribunals was not exercised. It is always said, that at times what the common law courts could not do, can be done by these methods of arbitration and conciliation as they are very problem specific. One of the problems in the act that can't be looked away, is that even though the act aims to minimize the judicial intervention it, the supreme court has said that if the party does not comply with the interim relief order of the arbitration tribunal, they will be tried for contempt of court, so one or the other way are still allowing the judicial intervention but we need to understand that these statutes even though are in place and the tribunals were designed so that the mainstream judiciary is not disturbed, they are still the higher judicial authority. So, just like lower courts, even the tribunals can appeal to the higher courts and there should be no harm in that. We, know how courts are burdened with a lot of cases coming every day, there is a lot of pendency as a result at times it can be very time consuming for the people to approach the court and can also be very costly. Eventually, people turn to arbitration methods. Now, while these arbitration proceedings are about to begin or are in process, any inevitable need can arise where one or the other party need to seek some relief which are of such a nature that has to be dealt then and there, then in such cases they can approach during the proceedings, to the arbitration tribunal and before or after the arbitration proceeding to the court, depending upon the requirement. To understand any part of any statute, it is very important to look into the purpose why at the very first place it was put forward. The arbitration and conciliation act, was initiated so that India becomes one of those nations, where domestic and international commercial disputes are resolved by the way of arbitration. And, since arbitration is considered as a more efficient and quicker way of dispute resolution, the sections within the act facilitate the same. The powers are quite similar in both the section but the difference lies in by whom such power is exerted and when. Earlier, we just had section 9 but with the amendment of the act in 2015, section 17 was also amended and the powers of the tribunals were also added clearly. The way arbitration and conciliation are rising these days, such sections, which deal with emergency aspect of the parties become very important to provide relief to the parties.